

ASSEMBLY BILL

No. 1563

**Introduced by Committee on Labor and Employment (Monning
(Chair), Eng, Furutani, Ma, and Portantino)**

March 11, 2009

An act to amend Section 2810 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1563, as introduced, Committee on Labor and Employment. Employment: contracts or agreements for labor or services.

Existing law prohibits a person or entity from entering into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, or security guard contractor where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided. Existing law permits an aggrieved employee to bring an action to recover the greater of his or her actual damages or \$250 per employee per violation for an initial violation and \$1,000 per employee for each subsequent violation, in addition to injunctive relief.

This bill would require the Labor Commissioner, by July 1, 2010, to develop and implement an enforcement protocol to be used in an investigation involving a labor contractor whose contract or agreement for construction, farm labor, garment, janitorial, or security guard services does not include funds sufficient to allow the contractor to comply with applicable local, state, and federal laws or regulations governing the labor or services to be provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2810 of the Labor Code is amended to
2 read:

3 2810. (a) A person or entity ~~may~~ *shall* not enter into a contract
4 or agreement for labor or services with a construction, farm labor,
5 garment, janitorial, or security guard contractor, where the person
6 or entity knows or should know that the contract or agreement
7 does not include funds sufficient to allow the contractor to comply
8 with all applicable local, state, and federal laws or regulations
9 governing the labor or services to be provided.

10 (b) There is a rebuttable presumption affecting the burden of
11 proof that there has been no violation of subdivision (a) where the
12 contract or agreement with a construction, farm labor, garment,
13 janitorial, or security guard contractor meets all of the requirements
14 in subdivision (d).

15 (c) Subdivision (a) does not apply to a person or entity who
16 executes a collective bargaining agreement covering the workers
17 employed under the contract or agreement, or to a person who
18 enters into a contract or agreement for labor or services to be
19 performed on his or her home ~~residence~~ *residence*, provided that
20 a family member resides in the residence ~~or residence~~ for which
21 the labor or services are to be performed for at least a ~~part~~ *portion*
22 of the year.

23 (d) To meet the requirements of subdivision (b), a contract or
24 agreement with a construction, farm labor, garment, janitorial, or
25 security guard contractor for labor or services must be in writing,
26 in a single document, and contain all of the following provisions,
27 in addition to any other provisions that may be required by
28 regulations adopted by the Labor Commissioner ~~from time to time~~:

29 (1) The name, address, and telephone number of the person or
30 entity and the construction, farm labor, garment, janitorial, or
31 security guard contractor through whom the labor or services are
32 to be provided.

33 (2) A description of the labor or services to be provided and a
34 statement of when those services are to be commenced and
35 completed.

1 (3) The employer identification number for state tax purposes
2 of the construction, farm labor, garment, janitorial, or security
3 guard contractor.

4 (4) The workers' compensation insurance policy number and
5 the name, address, and telephone number of the insurance carrier
6 of the construction, farm labor, garment, janitorial, or security
7 guard contractor.

8 (5) The vehicle identification number of any vehicle that is
9 owned by the construction, farm labor, garment, janitorial, or
10 security guard contractor and used for transportation in connection
11 with ~~any~~ a service provided pursuant to the contract or agreement,
12 the number of the vehicle liability insurance policy that covers the
13 vehicle, and the name, address, and telephone number of the
14 insurance carrier.

15 (6) The address of ~~any~~ real property to be used to house workers
16 in connection with the contract or agreement.

17 (7) The total number of workers to be employed under the
18 contract or agreement, the total amount of all wages to be paid,
19 and the date or dates when those wages are to be paid.

20 (8) The amount of the commission or other payment made to
21 the construction, farm labor, garment, janitorial, or security guard
22 contractor for services under the contract or agreement.

23 (9) The total number of persons who will be utilized under the
24 contract or agreement as independent contractors, along with a list
25 of the current local, state, and federal contractor license
26 identification numbers that the independent contractors are required
27 to have under local, state, or federal laws or regulations.

28 (10) The signatures of all parties, and the date the contract or
29 agreement was signed.

30 (e) (1) To qualify for the rebuttable presumption set forth in
31 subdivision (b), a material change to the terms and conditions of
32 a contract or agreement between a person or entity and a
33 construction, farm labor, garment, janitorial, or security guard
34 contractor must be in writing, in a single document, and contain
35 all of the provisions listed in subdivision (d) that are affected by
36 the change.

37 (2) If a provision required to be contained in a contract or
38 agreement pursuant to paragraph (7) or (9) of subdivision (d) is
39 unknown at the time the contract or agreement is executed, the
40 best estimate available at that time is sufficient to satisfy the

1 requirements of subdivision (d). If an estimate is used in place of
2 actual figures in accordance with this paragraph, the parties to the
3 contract or agreement have a continuing duty to ascertain the
4 information required pursuant to paragraph (7) or (9) of subdivision
5 (d) and to reduce that information to writing in accordance with
6 the requirements of paragraph (1) once that information becomes
7 known.

8 (f) A person or entity who enters into a contract or agreement
9 referred to in ~~subdivisions~~ *subdivision* (d) or (e) shall keep a copy
10 of the written contract or agreement for a period of not less than
11 four years following the termination of the contract or agreement.

12 (g) (1) An employee aggrieved by a violation of subdivision
13 (a) may file an action for damages to recover the greater of ~~all of~~
14 his or her actual damages or two hundred fifty dollars (\$250) per
15 employee per violation for an initial violation and one thousand
16 dollars (\$1,000) per employee for each subsequent violation, and,
17 upon prevailing in an action brought pursuant to this section, may
18 recover costs and reasonable attorney's fees. ~~An To maintain an~~
19 ~~action under this section may not be maintained unless it is pleaded~~
20 ~~and proved that~~, an employee *shall plead and prove that he or she*
21 *was injured as a result of a violation of a labor law or regulation*
22 *in connection with the performance of the contract or agreement.*

23 (2) An employee aggrieved by a violation of subdivision (a)
24 may also bring an action for injunctive relief and, upon prevailing,
25 may recover costs and reasonable ~~attorney's~~ *attorneys'* fees.

26 (h) The phrase "construction, farm labor, garment, janitorial,
27 or security guard contractor" includes ~~any~~ a person, as defined in
28 this code, whether or not licensed, who is acting in the capacity
29 of a construction, farm labor, garment, janitorial, or security guard
30 contractor.

31 (i) (1) The term "knows" includes the knowledge, arising from
32 familiarity with the normal facts and circumstances of the business
33 activity engaged in, that the contract or agreement does not include
34 funds sufficient to allow the contractor to comply with applicable
35 laws.

36 (2) The phrase "should know" includes the knowledge of any
37 additional facts or information that would make a reasonably
38 prudent person undertake to inquire whether, taken together, the
39 contract or agreement contains sufficient funds to allow the
40 contractor to comply with applicable laws.

1 (3) A failure by a person or entity to request or obtain~~any~~
2 information from the contractor that is required by~~any~~ *an*
3 applicable statute or by the contract or agreement between them;
4 constitutes knowledge of that information for purposes of this
5 section.

6 (j) *The Labor Commissioner shall, not later than July 1, 2010,*
7 *develop and implement an enforcement protocol for investigations*
8 *involving a construction, farm labor, garment, janitorial, or*
9 *security guard contractor whose contract or agreement for labor*
10 *or services does not include funds sufficient to allow the contractor*
11 *to comply with applicable local, state, and federal laws or*
12 *regulations governing the labor or services to be provided.*